

AMENDED IN ASSEMBLY APRIL 10, 2000  
AMENDED IN ASSEMBLY MARCH 30, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2080**

**Introduced by Assembly Member Granlund**

February 22, 2000

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An act to amend ~~Section 14110.8~~ *Sections 14110.8 and 15610.30* of the Welfare and Institutions Code, relating to Medi-Cal.

LEGISLATIVE COUNSEL'S DIGEST

AB 2080, as amended, Granlund. Medi-Cal: long-term care services.

Existing law provides for the Medi-Cal program, administered by the State Department of Health Services, under which qualified low-income persons are provided with health care services.

Existing law provides that when a patient in a nursing facility who is on non-Medi-Cal status converts to Medi-Cal coverage, any security deposit paid to the facility by the patient or on his or her behalf, as a condition of admission to the facility, shall be returned and the obligations and responsibilities of the patient or responsible party shall be null and void.

This bill would, instead, designate a patient as a resident, and would provide that these obligations shall, during the time period the resident is covered by the Medi-Cal program,

be limited to the obligations and responsibilities provided for under the Medi-Cal program.

Existing law also permits a facility to require, as a condition of admission, that where the patient has an agent, the agent sign or cosign the admissions agreement and agree to distribute to the facility, promptly when due, the share of cost and any other charges not paid for by the Medi-Cal program which the patient and his or her agent has agreed to pay.

This bill would require a resident and his or her agent to pay a facility the share of cost for which the resident is responsible under the Medi-Cal program.

*The bill would authorize the resident or agent to apply for a hearing, if the resident or agent disputes the amount of share of cost owed to a facility.*

*Existing law provides that the amount of the agent's financial obligation under these provisions is limited to the amount of the funds received but not distributed to the facility.*

*This bill would provide an exception to this provision.*

Existing law provides that any agent who willfully violates the above-described provisions is guilty of a misdemeanor.

~~This bill would apply this crime to an agent or individual, and would also specify penalties to be imposed in a civil action brought for a willful violation of these provisions. revise this provision to eliminate the requirement that the violation be willful.~~

*Existing law defines financial abuse for purposes of the Elder Abuse and Dependent Adult Civil Protection Act under which certain persons are required to report suspected absence of elder or dependent adults.*

*This bill would add to the definition the situation in which a person, including, but not limited to, one who has the care or custody of, or who stands in a position of trust with regard to, an elder's or a dependent adult's monies, income, or other assets, willfully fails to pay to a long-term care facility the share of cost for which the elder or dependent adult is responsible under the Medi-Cal program, unless otherwise exempted by law.*

Because the bill would change the definition of a crime, the bill would constitute a state-mandated local program.



The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of  
2 the following:

3 (a) Residents in California's long-term care facilities  
4 are particularly vulnerable to the theft of personal funds  
5 designated as resident "share of cost" under the Medi-Cal  
6 program.

7 (b) The theft or illegal diversion of a resident's share  
8 of cost funds has an adverse impact on the resources  
9 available to ensure quality care for all facility residents.

10 (c) This act is necessary to protect long-term care  
11 resident rights, provide appropriate resources for  
12 resident care, and ensure that resident funds designated  
13 to pay for long-term care are used for that purpose.

14 (d) This act is intended to affect individuals who  
15 intentionally steal or divert resident share of cost, and not  
16 to change the obligations or responsibilities of Medi-Cal  
17 residents or deter legitimate disputes over the amount of  
18 a resident's share of cost.

19 SEC. 2. Section 14110.8 of the Welfare and Institutions  
20 Code is amended to read:

21 14110.8. (a) For the purposes of this section:

22 (1) "Facility" means any long-term health care facility  
23 as defined in *subdivisions (c), (d), (e), (g), and (h) of*  
24 Section 1250 of the Health and Safety Code.

25 (2) "Resident" means a person who is a facility  
26 resident or patient and a Medi-Cal beneficiary and whose  
27 facility care is being paid for in whole or in part by  
28 Medi-Cal.

1 (3) “Agent” means a person who manages, uses, or  
2 controls those funds or assets of the resident that legally  
3 are required to be used to pay the resident’s share of cost  
4 and other charges not paid for by the Medi-Cal program.

5 (4) “Responsible party” means a person other than the  
6 resident or potential resident, who, by virtue of signing or  
7 cosigning an admissions agreement of a facility, either  
8 together with, or on behalf of, a potential resident,  
9 becomes personally responsible or liable for payment of  
10 any portion of the charges incurred by the resident while  
11 in the facility. A person who signs or cosigns a facility’s  
12 admissions agreement by virtue of being an agent under  
13 a power of attorney for health care or an attorney-in-fact  
14 under a durable power of attorney executed by the  
15 potential resident, a conservator of the person or estate  
16 of the potential resident, or a representative payee, is not  
17 a responsible party under this section, and does not  
18 thereby assume personal responsibility or liability for  
19 payment of any charges incurred by the resident, except  
20 to the extent that the person, or the resident’s conservator  
21 or representative payee is an agent as defined in  
22 paragraph (3).

23 ~~(5) “Willfully” means intentionally, knowingly, or~~  
24 ~~purposely acting, or acting or failing to act with~~  
25 ~~intentional disregard for the consequences, without~~  
26 ~~justifiable excuse, and, when appropriate, after adequate~~  
27 ~~written notice is sent to the last known address of the~~  
28 ~~agent, if available.~~

29 (b) No facility may require or solicit, as a condition of  
30 admission into the facility, that a Medi-Cal beneficiary  
31 have a responsible party sign or cosign the admissions  
32 agreement. No facility may accept or receive, as a  
33 condition of admission into the facility, the signature or  
34 cosignature of a responsible party for a Medi-Cal  
35 beneficiary.

36 (c) A facility may require, as a condition of admission,  
37 where a resident has an agent, that the resident’s agent  
38 sign or cosign the admissions agreement and agree to  
39 distribute to the facility promptly when due, the share of  
40 cost and any other charges not paid for by the Medi-Cal

1 program which the resident or his or her agent has agreed  
2 to pay. Except as provided in ~~subdivisions (f) and (g), the~~  
3 ~~financial~~ *the Elder Abuse and Dependent Adult Civil*  
4 *Protection Act, Chapter 11 (commencing with Section*  
5 *15600) of Part 3 of Division 9, the financial* obligation of  
6 the agent shall be limited to the amount of the resident's  
7 funds received but not distributed to the facility. A new  
8 agent who did not sign or cosign the admissions  
9 agreement shall be held responsible to distribute funds in  
10 accordance with this section.

11 (d) When a resident on non-Medi-Cal status converts  
12 to Medi-Cal coverage, any security deposit paid to the  
13 facility by the resident or on the resident's behalf as a  
14 condition of admission to the facility shall be returned and  
15 the obligations and responsibilities of the resident or  
16 responsible party during the time period when the  
17 resident is covered by Medi-Cal shall be limited to the  
18 obligations and responsibilities provided for under the  
19 Medi-Cal program. In the event that the resident  
20 becomes ineligible for Medi-Cal coverage at any time  
21 subsequent to converting to Medi-Cal coverage ~~status,~~  
22 the resident and responsible party shall be bound by the  
23 terms of the original admission agreement, or any  
24 admission agreement in effect at ~~that time~~ *the time the*  
25 *Medi-Cal coverage commenced.*

26 (e) *When a resident on non-Medi-Cal status converts*  
27 *to Medi-Cal coverage, the facility shall make a reasonable*  
28 *attempt to assist the resident in contacting the county to*  
29 *obtain an estimate of the resident's share of cost.*

30 (f) A resident and his or her agent shall pay to the  
31 facility the share of cost, for which he or she is responsible  
32 under the Medi-Cal program, unless otherwise exempted  
33 by law.

34 ~~(f) When any agent or other individual willfully~~  
35 ~~violates the requirements of this section either of the~~  
36 ~~following shall apply:~~

37 ~~(1) The agent or individual~~

38 (g) *If a resident or his or her agent disputes the*  
39 *amount of share of cost owed to a facility, the resident or*  
40 *agent shall apply for a state hearing pursuant to Section*

1 10950 for a determination of the amount of share of cost  
2 owed to the facility.

3 (h) Any agent who violates the requirements of this  
4 section is guilty of a misdemeanor, and upon conviction  
5 thereof, shall be punished by a fine not to exceed two  
6 thousand five hundred dollars (\$2,500) or by  
7 imprisonment in the county jail not to exceed 180 days, or  
8 both.

9 ~~(2) The agent is subject to a civil action brought by a~~  
10 ~~Medi-Cal beneficiary, a facility, or a state or federal~~  
11 ~~agency. In those cases both of the following shall apply:~~

12 ~~(A) The agent shall be personally liable to the plaintiff~~  
13 ~~for the amount of the unpaid share of cost up to the sum~~  
14 ~~of the resident's funds willfully misappropriated by the~~  
15 ~~agent plus interest at the legal rate.~~

16 ~~(B) The court may impose a civil penalty not to exceed~~  
17 ~~the actual amount of the unpaid charges for which the~~  
18 ~~individual is liable. In assessing the amount of the civil~~  
19 ~~penalty, the court shall consider any one or more of the~~  
20 ~~relevant circumstances presented by the parties to the~~  
21 ~~case, not limited to the willfulness of the conduct of the~~  
22 ~~agent or individual, the length of time over which the~~  
23 ~~conduct occurred, the amount of the resident's funds~~  
24 ~~received by the agent or individual and the agent or~~  
25 ~~individual's ability to pay the penalty. Any civil penalty~~  
26 ~~collected from an agent or individual who willfully~~  
27 ~~violates the requirements of this section shall be paid into~~  
28 ~~the treasury of the county department vested with~~  
29 ~~jurisdiction over adult social services programs and shall~~  
30 ~~be used for that purpose.~~

31 ~~(g) In a civil action brought pursuant to this section,~~  
32 ~~attorney's fees and costs shall be awarded to the~~  
33 ~~prevailing party.~~

34 ~~SEC. 3.—~~

35 *SEC. 3. Section 15610.30 of the Welfare and*  
36 *Institutions Code is amended to read:*

37 15610.30. (a) "Financial abuse" means a situation in  
38 which *any one or both* of the following apply:

39 (1) A person, including, but not limited to, one who  
40 has the care or custody of, or who stands in a position of

1 trust to, an elder or a dependent adult, takes, secretes, or  
2 appropriates their money or property, to any wrongful  
3 use, or with the intent to defraud.

4 (2) *A person, including, but not limited to, one who*  
5 *has the care or custody of, or who stands in a position of*  
6 *trust with regard to, an elder's or a dependent adult's*  
7 *monies, income, or other assets, willfully fails to pay to the*  
8 *long-term care facility the share of cost for which the*  
9 *elder or dependent adult is responsible under the*  
10 *Medi-Cal program, unless otherwise exempted by law.*

11 (3) A situation in which all of the following conditions  
12 are satisfied:

13 (A) An elder (who would be a dependent adult if he  
14 or she were between the ages of 18 and 64) or dependent  
15 adult or his or her representative requests that a third  
16 party transfer to the elder or dependent adult or to his or  
17 her representative, or to a court appointed receiver,  
18 property that meets all of the following criteria:

19 (i) The third party holds or has control of the property.

20 (ii) The property belongs to, or is held in express trust,  
21 constructive trust or resulting trust for, the elder or  
22 dependent adult.

23 (iii) The ownership or control of the property was  
24 acquired in whole or in part by the third party or someone  
25 acting in concert with the third party from the elder or  
26 dependent adult at a time when the elder or dependent  
27 adult was a dependent adult or was a person who would  
28 have been a dependent adult if he or she had then been  
29 between the ages of 18 and 64.

30 (B) Despite the request for the transfer of property,  
31 the third party without good cause either continues to  
32 hold the property or fails to take reasonable steps to make  
33 the property readily available to the elder or dependent  
34 adult, to his or her representative or to a court appointed  
35 receiver.

36 (C) The third party committed acts described in this  
37 paragraph in bad faith. A third party shall be deemed to  
38 have acted in bad faith if the third party either knew or  
39 should have known that the elder or dependent adult had  
40 the right to have the property transferred or made

1 readily available. For purposes of this subdivision, a third  
2 party should have known of this right if, on the basis of the  
3 information received by the elder or dependent adult, or  
4 the elder or dependent adult's representative, it is  
5 obvious to a reasonable person that the elder or  
6 dependent adult had this right.

7 (b) For the purpose of this section, the term "third  
8 party" means a person who holds or has control of  
9 property that belongs to or is held in express trust,  
10 constructive trust or resulting trust for an elder or  
11 dependent adult.

12 (c) For the purposes of this section, the term  
13 "representative" means an elder or dependent adult's  
14 conservator of the estate, or attorney-in-fact acting within  
15 the authority of the power of attorney.

16 *SEC. 4.* No reimbursement is required by this act  
17 pursuant to Section 6 of Article XIII B of the California  
18 Constitution because the only costs that may be incurred  
19 by a local agency or school district will be incurred  
20 because this act creates a new crime or infraction,  
21 eliminates a crime or infraction, or changes the penalty  
22 for a crime or infraction, within the meaning of Section  
23 17556 of the Government Code, or changes the definition  
24 of a crime within the meaning of Section 6 of Article  
25 XIII B of the California Constitution.

